

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TOMAREV PATTERSON,

Case No. 2:18-cv-00507-GMN-NJK

Plaintiff,

ORDER

v.

DR. GEORGE,

Defendant.

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. On March 21, 2018, this Court issued an order denying the application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (ECF No. 3 at 1-2). The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$400.00 within thirty days from the date of that order. (*Id.* at 2). The thirty-day period has now expired, and Plaintiff has not filed another application to proceed *in forma pauperis* or paid the full filing fee.

On March 29, 2018, Plaintiff filed a motion for appointment of counsel and to compel the prison law library not to hinder his right to petition the court. (ECF No. 4). In that motion, Plaintiff acknowledged that he was waiting for the prison to send him back his financial certificate and account statement. (*Id.* at 3). The Court now denies the motion for appointment of counsel without prejudice and notes that Plaintiff's request for counsel did not relate to his ability to acquire the documents necessary to complete his

1 application to proceed *in forma pauperis*.

2 District courts have the inherent power to control their dockets and “[i]n the
3 exercise of that power, they may impose sanctions including, where appropriate . . .
4 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
5 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
6 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
7 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
8 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
9 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
10 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
11 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
12 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
13 v. *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
14 failure to comply with local rules).

15 In determining whether to dismiss an action for lack of prosecution, failure to obey
16 a court order, or failure to comply with local rules, the court must consider several factors:
17 (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
18 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
19 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
20 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
21 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

22 In the instant case, the Court finds that the first two factors, the public’s interest in
23 expeditiously resolving this litigation and the Court’s interest in managing the docket,
24 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
25 in favor of dismissal, since a presumption of injury arises from the occurrence of
26 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
27 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
28 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor

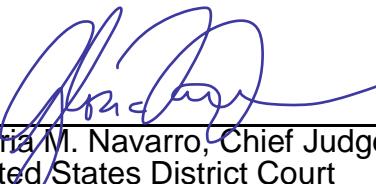
1 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
2 the court's order will result in dismissal satisfies the "consideration of alternatives"
3 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
4 F.2d at 1424. The Court's order requiring Plaintiff to file another application to proceed
5 *in forma pauperis* or pay the full filing fee within thirty days expressly stated: "IT IS
6 FURTHER ORDERED that if Plaintiff does not timely comply with this order, dismissal of
7 this action may result." (ECF No. 3 at 2). Thus, Plaintiff had adequate warning that
8 dismissal would result from his noncompliance with the Court's order to file another
9 application to proceed *in forma pauperis* or pay the full filing fee within thirty days.

10 It is therefore ordered that this action is dismissed without prejudice based on
11 Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the full
12 filing fee in compliance with this Court's March 21, 2018, order.

13 It is further ordered that the motion for appointment of counsel (ECF No. 4) is
14 denied without prejudice.

15 It is further ordered that the Clerk of Court shall enter judgment accordingly.

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17 DATED THIS 30 day of April 2018.

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20 Gloria M. Navarro, Chief Judge
United States District Court

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